Attachment B

FTC Votes to Seek Damages In Ads' Warning on Smoking

By Carole Shifrin
Washington Post Staff Writer

The Federal Trade Commission has decided to seek civil penalties from the nation's six major cigarette companies for allegedly violating agreements they signed governing how they advertise warnings of the dangers of smoking.

A source said the penalties, if granted, could total millions or billions of dollars.

The FTC decision is potentially the most significant and sizable action to be undertaken by the commission.

In 1972, the six firms, which manufacture 99 per cent of all cigarettes sold in the United States, consented to include in their advertising a "clear and conspicuous" warning of the dangers of smoking.

The FTC voted, 4 to 1, last week to charge the companies with failing to live up to their legally binding agreements and asked the Justice Department to institute civil penalty proceedings against them. If the Justice Department does not act within 45 days, the FTC will go to court.

The companies cited are American Brands, Inc.; Brown and Williamson Tobacco Corp.; Liggett and Myers Inc.; Lorillard Corp.; Philip Morris, Inc.; and R. J. Reynolds Industries, Inc.

The agreements signed three years ago by the firms required them to display prominently in all advertising the health warning required on cigarette packages: "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health."

The rules about the disclosures also were specific, with the warning to be printed on white with a black border in a rectangle in a size of type that increased with the size of the ad, and to be located parallel to the bottom margin of the ad.

An advertisement fewer than 65 square inches must carry a warning in 10-point type. If the ad is more than 180 square inches, the type size for the warning must be 16-point. (This newspaper type is 8 points high.)

The warnings were to be printed in all advertising done by the companies: newspapers, magazines, billboards, cards in public-transit vehicles, posters and display materials, point-of-sale promotional information such as placards and store signs, handbills, mailed leaflets, theater programs and vending machines.

Cigarettes may not be advertised on television.

In its action last week, the commission charged that the companies had failed to comply with the provisions of the orders in much of their advertising.

One count of the complaint charges the companies with failing to make "clear and conspicuous" warnings as required in media, point-of-sale display and other ads. In a significant amount of advertising, the warnings are smaller than required, not included or placed in a portion of the ad where they may be trimmed off in production, the FTC charged.

Another count charges that foreign language ads distributed in periodicals and newspapers in the United States have not carried the warning in the appropriate foreign language — for example, the warning might be in English in a Spanish-language newspaper—even after the violation was called to the attention of the violators.

The FTC exempted two types of ads — billboards and transit cards — from immediate prosecution. The FTC gave the companies a six-month period to bring these ads into compliance before it institutes civil penalty action for any violations.

In the complaint forwarded to the Justice Department, the FTC is asking for:

- Monetary damages. Violations of FTC orders were subject to fines of $5,000 a day for each violation until Congress boosted the penalties to $10,000 a day in amendments to the 1973 act that authorized construction of the trans-Alaska pipeline.
- Creation of a trust fund by the cigarette companies for "corrective" advertising. Estimates place the amount of money that could go into such a fund at $6 million.
- Permanent injunctions barring further violations of the orders.
- The cost of the actions to be paid by the cigarette companies.

Penalties could amount to billions of dollars because the violations are counted by the number of ads distributed daily. Thus, one ad that failed to comply with the consent order and which is distributed in a magazine that sells 6 million copies could cost a company $60 million if the $10,000-per-day penalty was assessed.

100505023

Source: https://www.industrydocuments.ucsf.edu/docs/fgmk0000